

Restriction Requirement

The Office Action sets forth a requirement for restriction between

Group I, Claims 1-39, drawn to a solution comprising buffer, a cell-permeant constituent, a cell impermeant constituent, and a radical scavenger, classified in class 435, subclass 1.3;

Group II, Claims 40-48, drawn to an irradiated biological tissue product comprising a package, a tissue, a buffer, a cell permeant constituent, a cell impermeant constituent, and a radical scavenger, classified in Class 435, subclass 1.3;

Group III, Claims 49-65, drawn to a method for forming cryopreserved tissue comprising combining a specific solution with a tissue and freezing the tissue, classified in Class 435, subclass 1.3; and

Group IV, Claims 66-72, drawn to an improvement in a method for cryopreserving a tissue comprising a specific cryoprotectant solution, classified in class 435, subclass 1.3.

Applicants traverse the required restriction of Groups III and IV on grounds set forth below. In the event that the restriction requirement is maintained, Applicants provisionally elect Group III, Claims 49-65, drawn to a method for forming cryopreserved tissue. New Claims 73-110 depend from elected Claim 49. Accordingly, Claims 73-110 are included in Group III.

REMARKS

The Office has characterized the relationship between Groups III and IV as directed to different methods. The Office has further characterized the relationship between Groups III and IV as independent and physically and functionally distinct as claimed. Applicants traverse the restriction requirement of Groups III and IV on the grounds that, the subject matter of the required search is sufficiently small and closely related as to be capable of examination together.

Applicants note that one difference between Groups III and IV is that the claims in Group III are written as conventional method claims while the claims in Group IV are written in the Jepson claim format. Otherwise, the claims are directed to the same subject matter. The format of the claims should not be a reason to restrict these claims. Consequently, they should be examined together.

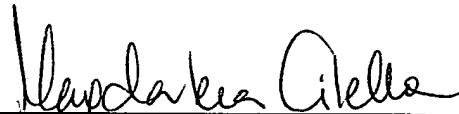
Moreover, the two groups have been classified in the Office Action in precisely the same class and subclass, *i.e.*, Class 435, subclass 1.3. In view of the common class and subclass identified in the Office Action for each of the groups, the claims in Groups III and IV should be examined together.

Finally, other than merely saying they are different, the Examiner has not provided any basis for restricting these claims as required by MPEP 808.02. For all of these reasons, the claims in Groups III and IV should be examined together and the restriction between these claims should be withdrawn.

Applicants respectfully submit that present application is now in condition for examination. Should the Examiner feel a discussion would expedite the prosecution of this application, the Examiner is kindly invited to contact the undersigned at (312) 245-5398.

Respectfully submitted,

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